

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 00-07**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of Tennessee sales and use tax to automobile sales involving trade-ins that are titled and registered in a state other than Tennessee.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER] is engaged in the business of selling and leasing vehicles. The taxpayer currently operates new and used car [BUSINESSES] and has recently opened a new [LOCATION] in [CITY], Tennessee.

The taxpayer often accepts trade-in vehicles from its customers. Some of the vehicles accepted for trade-in are titled and registered in Tennessee and some are titled and registered in states other than Tennessee. The used vehicle taken in trade is brought to the [CITY IN TENNESSEE] location where a new or used vehicle is purchased or leased from the taxpayer's inventory. Pursuant to T.C.A. § 67-6-510(a) and Tenn. Comp. R. & Regs. 1320-5-1-.02, the taxpayer collects and remits Tennessee sales tax based on the net difference between the price of the new or used vehicle and the credit given for the vehicle taken in trade.

QUESTION

Do T.C.A. § 67-6-510(a) and Tenn. Comp. R. & Regs. 1320-5-1-.02 apply equally to trade-in vehicles that are titled and registered in Tennessee and those that are titled and registered in states other than Tennessee?

RULING

Yes. Where the trade-in vehicle is titled and registered has no impact on the application of T.C.A. § 67-6-510(a) and Tenn. Comp. R. & Regs. 1320-5-1-.02.¹

ANALYSIS

Under the facts presented, the taxpayer sells and leases new and used vehicles in Tennessee. Pursuant to the Retailers' Sales Tax Act, T.C.A. § 67-6-101 et seq., the taxpayer collects and remits Tennessee sales tax on those transactions.

The taxpayer will often accept trade-in vehicles from customers toward the purchase or lease of a vehicle from the taxpayer's inventory. The tax base for a transaction that involves a trade-in is the net difference between the price of the new or used article and the credit given for the used article taken in trade. T.C.A. § 67-6-510(a) states as follows:

Where used articles are taken in trade, or in a series of trades, as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference, that is, the price of the new or used article sold less the credit for the used article taken in trade.

Tenn. Comp. R. & Regs. 1320-5-1-.02 provides as follows regarding trade-ins:

- (1) When an item of tangible personal property is taken in trade as a credit or part payment on the sale of new or used articles, the Sales and Use Tax shall be computed and paid on the net difference between the sales price of the new or used article sold and any credit actually given for the used

¹ This ruling does not apply to the trade-in credit allowed under T.C.A. § 67-6-510(b) when a motor vehicle dealer purchases a vehicle from the dealer's own inventory.

article accepted in trade. In cases where a credit is given for property which is owned to be applied to property which is being leased, credit may be given for the amount of credit allowed; in this case, the tax will apply to any consideration after the amount of credit given is consumed, and the lessor actually begins making charges for the lease or rental of tangible personal property.

- (2) Before any credit may be allowed for items taken in trade or trade-ins, the item so traded must be of a like kind and character of which is purchased, and indicated as "trade-in" by model and serial number, where applicable, on an invoice given to the customer.
- (3) Any tangible personal property involved in a transaction in which a dealer gives a check or cash for tangible personal property, and where the customer agrees to pay the full purchase price of the property being bought, will not be considered as a trade-in, and no credit may be given or allowed for it. In cases where a credit memorandum is given for tangible personal property which is intended to be traded-in on the purchase of new articles of tangible personal property, the provisions of paragraph (2) of this rule must be complied with.
- (4) Any recovery which may be received or allowed as a result of insurance may not be considered as a trade-in, and no credit may be given or allowed for such recoveries.

The question presented is whether a trade-in vehicle that is titled and registered in a state other than Tennessee is treated the same as a trade-in vehicle that is titled and registered in Tennessee for purposes of applying the statute and the rule. Neither T.C.A. § 67-6-510(a) nor Tenn. Comp. R. & Regs. 1320-5-1-.02 differentiates between vehicles that are titled and registered in Tennessee and vehicles that are titled and registered in states other than Tennessee. Accordingly, where the vehicle is titled and registered when traded has no impact on the application of the statute or the rule.

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APPROVED: Ruth E. Johnson
Commissioner

DATE: 2/18/00